

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CRIM. NO. 05-00325 HG-04
)	
Plaintiff,)	
)	
vs.)	
)	
BRYANT SPENCER (04),)	
)	
Defendant.)	
)	
)	
)	

**ORDER GRANTING GOVERNMENT'S MOTION FOR REDUCTION OF SENTENCE
FOR SUBSTANTIAL ASSISTANCE PURSUANT TO
FEDERAL RULE OF CRIMINAL PROCEDURE 35(b)(1)(A)**

On December 8, 2005, Defendant Bryant Spencer pled guilty to possession with intent to distribute in excess of 5 grams or more of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841 (b)(1)(A) (Count 3).

On June 8, 2006, the Court imposed a sentence of 60 months imprisonment. The Court also sentenced Defendant to four years supervised release and ordered him to pay a special assessment of \$100.

The guideline sentencing range, based on a total offense level of 23 and criminal history category II, was 51 to 63 months. The statutorily authorized minimum sentence was 60 months. Since the minimum of the guideline range was less than the statutorily authorized minimum sentence, the guideline range was adjusted to 60 to 63 months.

On June 8, 2007, the Government filed a Motion for Reduction

of Sentence for Substantial Assistance Pursuant to Federal Rule of Criminal Procedure 35(b)(1)(A) (Doc. 257, "Rule 35(b) Motion").

On June 13, 2007, Defendant filed a response in support of the Government's Rule 35(b) Motion (Doc. 258).

The Government recommended that the Court reduce Defendant's guideline range to an offense level of 20, criminal history category II, with a range of 37 to 46 months. The Government recommended a sentence at the low-end of the range.

Defendant requested that the Court grant the Rule 35(b) Motion and impose a sentence at the low end of the range of 37 to 46 months.

After reviewing the information provided by the Government, the Court GRANTS the Government's motion to reduce Defendant's sentence. Defendant's sentence is reduced to a term of 40 months.

STANDARD OF REVIEW

Federal Rule of Criminal Procedure 35(b)(1) provides:

Upon the government's motion made within one year of sentencing, the court may reduce a sentence if:

(A) the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person; and

(B) reducing the sentence accords with the Sentencing Commission's guidelines and policy statements.

A Rule 35 motion is essentially a plea for leniency and is addressed to the sound discretion of the district court. United States v. Smith, 964 F.2d 885, 887 (9th Cir. 1992).

ANALYSIS

The Court finds that the Defendant substantially assisted the Government in the investigation and prosecution of criminal activity. Defendant is entitled to a reduction of his sentence pursuant to Rule 35(b)(1)(A).

Based on the nature of Defendant's cooperation, the Court finds that a sentence reduction of 20 months from 60 months to 40 months imprisonment is reasonable given the factors the Court considers in fashioning a sentence pursuant to 18 U.S.C. § 3553.

CONCLUSION

In accordance with the foregoing, the Court GRANTS the Government's motion for reduction of sentence for substantial assistance, and reduces the Defendant's sentence from 60 months to 40 months. All the other aspects of the sentence remain unchanged.

IT IS SO ORDERED.

DATED: July 5, 2007, Honolulu, Hawaii.



/s/ Helen Gillmor

Chief United States District Judge

Crim. No. 05-00325 HG-04; United States v. Bryant Spencer (04);
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PROCEDURE 35(b)(1)(A)